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2.1 INTRODUCTION

[California laws](#) consist of 29 codes, with statutes and regulations covering various subjects pertaining to government agencies including food and agriculture. Information presented below is more specific to some laws that affect agriculture and related activities.

All laws or statutes such as those that become sections of the [Food and Agricultural Code](#) (FAC) are enacted by the passage of bills, either as a new law or amends or repeals of existing law(s). A bill becomes a statute when it is signed by the Governor and given a final chapter number by the Secretary of State. The Governor's Office works in conjunction with the Secretary of State's Office to ensure that signed bills are enacted in the order intended by the Legislature and the Governor.

The following sections address general pest exclusion powers and duties of the Secretary and employees of the California Department of Food and Agriculture, as well as those of county agricultural commissioners and their employees.

2.2. AGENCIES POWERS AND DUTIES

2.2.1 CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE

The powers and duties of CDFA are outlined in Sections 401-411 of the [Food and Agricultural Code](#) and could be summarized as follows:

- Promote and protect the state's agricultural industry.
- Enhance, protect, and perpetuate the ability of the private sector to produce food and fiber in a way that benefits the general welfare and economy of the state.
- Maintain the economic well being of agriculturally dependent rural communities.
- Prevent the introduction and spread of injurious insect or animal pests, plant diseases, and noxious weeds.
- Execute the provisions of this code, except as otherwise provided, and of other laws administered by it.
- With the prior approval of the Department of Fish and Game and the State Department of Health Services CDFA may reproduce or distribute biological control organisms that are not detrimental to public health and safety that are known to be useful in reducing or preventing plant or animal damage due to pests or diseases.
- Requires reports from County Agricultural commissioners for pest exclusion, treatment and control activities.
- The director and staff of CDFA's Plant Health and Pest Prevention Services (PHPPS) may enter upon any premises within the state to inspect the premises. This include inspecting any plant, appliance, or thing for pests and diseases, which is on such premises.
- The CDFA by rule or regulation may provide for the issuance and renewal on a two-year basis of licenses, certificates of registration, or other indices of authority.

Organization

The California Department of Food and Agriculture is under the control of a civil executive officer known as the Secretary of Food and Agriculture. He or she shall be appointed by, and hold office at the pleasure of, the Governor.

The secretary may appoint and in accordance with law, fix the salaries of such assistants, deputies, agents, experts, and other employees as are necessary for the administration of the department.

Intergovernmental Cooperation

The CDFA may, with the approval of the Governor,

cooperate with officials of the USDA or with officials of other states in the conduct of pest or disease investigations. This would be in the interest of protecting the state's agricultural industry from any pest or disease, which is not generally distributed in the state.

The director of CDFA's Plant Health and Pest Prevention Services (PHPPS) may enter into cooperative agreements with individuals, associations, boards of supervisors, and with departments, divisions, bureaus, boards, or commissions of the state or United States for the following purposes:

- Eradicate, control, or destroy any infectious disease or pest within California.
- Administer and enforce any activity, duty, or responsibility under the food and agricultural code, in addition to those activities, duties, or responsibilities designated or authorized to be carried-out by County Agricultural Commissioners.
- Arrange for the services of any individual employed by the United States, the state, or a county on a collaborative basis.

2.2.2 STATE BOARD OF FOOD AND AGRICULTURE

The [State Board of Food and Agriculture](#) advises the governor and CDFA Secretary on agricultural issues and consumer needs. The Board may make investigations, conduct hearings and prosecute actions concerning any matter or subject, which is under the jurisdiction of the department.

The Board meets monthly and conducts public forum that discuss issues that affect agriculture. These issues include pest prevention strategies, food safety, environment effects, urbanization, flood damages from winter storms, and future trends in agriculture.

[Board members](#) are appointed by the governor, and represent a broad range of agricultural commodities, geographic regions, the University of California and the California State University academic systems. The following guidelines are used in the selection of board members:

- One member represents the University of California.
- One member represents the state universities and colleges offering agriculture as part of its curriculum.
- Two members are from the state at large and represent the agricultural industry.
- Seven members represent the agricultural industry.
- Two members, with interest in and knowledge of the environment, represent the general public.
- Two members, with an interest in and knowledge of

consumer affairs, represent the general public.

2.2.3 COUNTY AGRICULTURAL COMMISSIONERS

The Food and Agricultural Code stipulates that a County Agricultural Commissioner shall make an annual report to the Director of CDFA's PHPPS on:

- Condition of agriculture in his or her county
- Pest detection, eradication, control, or management activities
- Pest exclusion actions or quarantine against pests
- Apiary, nursery and seed inspections
- Fruit and vegetable quality control
- Biotechnology, organic farming methods
- Integrated pest management and biological control
- Crop statistics

The commissioner, shall:

- Attend the annual meeting of the California Agricultural Commissioners Association or its successor, and other required meetings.
- Consult with USDA, CDFA, the UC systems, and other county agricultural commissioners on new and dangerous agricultural pests, observing and learning new/better methods of pest control
- Disseminate information, relating to pests that may exist in his/her county, or are likely to exist in it. The information may include life histories, habits, methods of detection, and methods of control of such pests
- Joint responsibility for the enforcement of laws and regulations are vested on PHPPS director and County Agricultural commissioner. The commissioner shall be responsible for local administration of the enforcement program.
- Assist CDFA in conducting surveys or investigations for the purpose of preventing the introduction and/or spread of injurious insect or animal pests, plant diseases, and noxious weeds.
- Contract with any person or association to certify the condition of a shipment of a regulated product.
- Correspond and meet with any interested individual, agency, group, association, or educational institution with an interest in, or information regarding, agricultural practices, as resources allow.
- The commissioner may enter into a mutual aid agreement with other counties for the purpose of sharing staff, equipment, expertise, information, and other resources.

As used in this manual "agriculture" includes, but is not limited to, developments and issues regarding all agricultural practices, traditional and alternative pest control

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methodology, and other areas of agriculture resource management.

The discretionary immunity doctrine as applied to a public entity and an employee of a public entity pursuant to Sections 815.2 and 820.2 of the Government Code applies to decisions of a county department of agriculture and their employees enforcing a state or local pest control or pest eradication statute, regulation, or ordinance. Nothing in this section authorizes or affects the filing of an action challenging the legal authority of the county department of agriculture to undertake the pest control or eradication action.

2.2.4 MEMORANDUM OF UNDERSTANDING – PLAN FOR PEST PREVENTION

PARTIES

California Department of Food and Agriculture and the California Agricultural Commissioners and Sealers Association

GENERAL PRINCIPLES

Pest prevention in California is mandated by Section 403 of the Food and Agricultural Code, which states, “The Department shall prevent the introduction and spread of injurious insects or animal pests, plant diseases, and noxious weeds.”

The State of California administers and operates a Pest Prevention System of five major components, pest exclusion, pest detection, pest eradication, public information and education, and pest identification and records.

1. PEST EXCLUSION

Definition: “Pest Exclusion” is the legal action intended to prevent the introduction of a pest into an area where it does not already occur, or into an area where legally established suppression or eradication activities are directed against it.

- A. It is the policy of the State of California to fully utilize Pest Exclusion as an integral part of the Pest Prevention System.
- B. It is the policy of the State of California to encourage origin states to eradicate and control pest infestations that threaten California. It is the policy of the state of California to encourage the USDA and origin states to establish valid certification programs.

- 1. Pest exclusion regulations shall be based on “biologically sound” principles. To be “biologically sound”, a pest exclusion regulation must meet the following criteria:
 - a. The biological background of the pest is fairly well

known, including its life history, hosts, mode of spread, and detection techniques

- b. Infestation is unknown in area to be protected, or is under eradication
 - c. Interception and prevention of entry are reasonably possible
 - d. There exists a reasonable assurance that the pest can be contained
 - e. The potential ecological range of the pest is known
 - f. The pest presents a threat to economic, social, or environmental impact to plants within the protected area
- 2. Pest exclusion regulations shall not be promulgated for or used as barriers to interstate commerce except as a bona fide attempt to protect against pest infestation.

C. Pest exclusion operations:

- 1. Maintain pest introduction deterrent for entire state by regulating the movement of target pests from an infested area to a protected area.
 - a. Regulate surface vehicles entering protected area from areas of pest contamination
 - i. At points which will provide statewide protection
 - ii. At appropriate times to be effective
 - b. Monitor air and maritime traffic entering the state for plant pest
 - i. Inspect all cargo shipments
 - ii. Spot check travelers
 - c. Maintain terminal inspections
 - i. US Post Offices
 - ii. Common carriers
 - iii. Hay and grain terminals
- 2. Cooperate with Federal Government and other states
 - a. Promote uniform pest exclusion regulation
 - b. Strengthen and encourage valid origin certification

California Department of Food Agriculture _____ Date _____

CA Agricultural Commissioners Association _____ Date _____

2.2.5 MEMORANDUM OF UNDERSTANDING - PLANT PEST QUARANTINE POLICY

PARTIES

California Department of Food and Agriculture and the California Agricultural Commissioners and Sealers Association

PURPOSE

Plant pest quarantines are imposed to prevent the artificial introduction of or to limit the spread of agricultural plant pests. Such quarantines may restrict the production, movement or existence of plants, plant products, animals, animal products, or any other articles or material, or activity of people, which could result in the artificial introduction, or spread of the specified pests.

AUTHORITY

The Director is charged with the responsibility for preventing the introduction and spread of injurious insect or animal pests, plant diseases, and noxious weeds (Section 403, Food and Agricultural Code). He is authorized to adopt such regulations as are reasonably necessary to fulfill this responsibility (Sections 407, 5301, 5302, and 5322, FAC). Other governmental agencies (e.g., counties, cities, and districts) may not establish quarantines against each other, on account of the existence of any pest, without the written consent of the Director (Section 5305, FAC).

GENERAL PRINCIPLES

1. Inasmuch as the purposes of plant quarantines and the means required to achieve them cannot be undertaken by private individuals or groups, quarantines properly are the responsibility of government
2. Quarantines shall not be imposed as trade barriers
3. Quarantines will be established on a biologically sound basis:
 - a. The plant pest targeted must pose an actual or anticipated threat to a substantial agricultural interest and/or the general public.
 - b. No substitute or alternative mitigating action will accomplish the same pest prevention purpose.
 - c. Accomplishment of the stated purpose is a reasonable expectation.
 - d. Economic and/or environmental benefits outweigh the cost of administration and the costs to those who must comply with the restrictions imposed.
4. Regulations establishing quarantines will be adopted with input from those interested in and affected by them. The agricultural commissioners and the United States Department of Agriculture are cooperating agencies, which will be involved as appropriate.
5. Quarantines will be as narrow in scope as possible

while maximizing the potential for accomplishing their purpose.

- a. Quarantines imposed in connection with plant pest eradication projects reasonably may be broader in scope and/or more restrictive because of the importance of the quarantined pest, the prognosis for its eradication or control, and its effects on the environment.
 - b. Quarantines imposed to prevent or slow the spread of an already established pest allow of the scope of and restrictions imposed to be relatively narrow
6. Quarantine areas will be as limited as possible consistent with the area known to be infested with the pest. Whenever possible, boundaries shall be based upon existing jurisdictional state, county or township lines, major highways or roads, or geographic features such as rivers and mountain ranges.
 7. Quarantines will be written as clearly and concisely as possible so as to enhance understanding and enforcement.
 8. The absence of complete biological knowledge of a pest will not necessarily prohibit the adoption of a quarantine.
 9. Adoption of a quarantine against a serious plant pest new to the state or new to a major area of the state will be accompanied by an information campaign, the scope and intensity of which is in proportion to the economic and/or environmental importance of the pest.
 10. The scope of and restrictions imposed should be reduced or increased based on experience and information obtained in the administration of the quarantine.
 11. Regulations establishing quarantines will be repealed when their purposes have been accomplished, the pest quarantined against has been eradicated or its spread can be controlled in absence of the quarantine, or it is determined that the purpose cannot be achieved.

EXTERIOR QUARANTINES

Exterior quarantines will be adopted to prevent the artificial introduction of serious plant pests into California. Consistent with the general principles, they will be adopted only when no substitute or alternative mitigating action will accomplish the same purpose. They also will be as limited as possible in terms of area and commodities covered. Exterior quarantines are promulgated to protect the health and welfare of the entire state. Consequently, they reflect statewide pest exclusion concerns.

INTERIOR QUARANTINES

Interior quarantines will be adopted as necessary to complement state plant pest eradication projects or to prevent or slow the spread of a serious plant pest already established in California. They will be established consistent with the general principles, but with greater emphasis placed on a

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cooperative relationship between the director and the agricultural commissioners. At the termination of an unsuccessful eradication effort the interior quarantine will be evaluated to determine, consistent with the principles herein, if the quarantine should be maintained, amended or discontinued.

Interior quarantine s adopted to aid in the state's eradication of new serious pests not established in the state generally will be funded, subject to budget appropriation or redirection, together with the other eradication costs.

Interior quarantines adopted or amended to prevent or slow the spread of pests already established in California are not expected to result in increased overall county costs. County departments of agriculture will shift priorities within their agricultural programs accordingly. Only in those instances where the county must hire additional employees is a state-mandated increase in cost deemed to exist. Where possible, the increased costs should be recovered by the affected counties via charges for the inspections required by the quarantine.

LOCAL COUNTY ORDINANCES

Section 5305, FAC, prohibits the establishment by local jurisdictions of quarantines against each other, on account of the existence of any pest, without the written consent of the director.

The required consent may be granted only in those instances where the director has determined: 1) That the pest is not of statewide interest and concern and/or an interior quarantine will not be adopted; and, 2) That the ordinance establishing a quarantine was adopted following the notification, publishing, public input and other requirements which must be met by the director, under section 11340, et seq., of the Government Code, when he adopts quarantine regulations, except that notice of the proposed ordinance shall not be published in the California Administrative Notice Register and the required documents shall be filed with the director and not with the Office of Administrative Law.

Consent will not be granted when the ordinance has an effective date earlier than 30 days following the director's consent unless the ordinance is adopted because an emergency exists.

QUARANTINE COMMISSIONER'S CIRCULARS *(this document had been merged with County Training Manual to County Procedural Training Manual)*

Quarantine Commissioner's Circulars regarding local quarantine ordinances, lawful rejection practices, and policies of the various county departments of agriculture will be prepared, distributed and maintained by the department to

keep agricultural commissioners and industry apprised of local ordinances, practices, and policies. Such circulars shall not impose certification or other conditions of entry of commodities or otherwise have the effect of quarantines, except when they are noticing the requirements imposed by local ordinances, which have received the director's written consent. County rejection practices and policies regarding intrastate shipments of plants or other carriers of plant pests of local concern shall be in accordance with the authority granted in sections 6501- 6524 of the Food and Agricultural Code.

California Department of Food Agriculture Date

CA Agricultural Commissioners Association Date

2.2.6 MEMORANDUM OF UNDERSTANDING - PROCEDURE FOR HANDLING PLANT QUARANTINE SHIPMENTS

PARTIES

California Department of Food and Agriculture and the California Agricultural Commissioners and Sealers Association

GENERAL PRINCIPLES

For the sake of uniformity in plant quarantine, the following is established as a procedure for determining the status and proper disposition of shipments subject to plant quarantine inspection.

A shipment *shall* be rejected if it is:

- a. In violation of a law or quarantine regulation of this state or the federal government, or
- b. Infested or infected or there is reasonable cause to believe* that it is infected or infected with any animal or other organism dangerous or detrimental to the agricultural industry, which in the area of destination is (a) new or not known to occur, or (b) of limited distribution, or (c) being subjected to eradication or intensive control.

A shipment *shall not* be rejected if it is:

- a. Not in violation of a law or quarantine regulation of this state or the federal government, or
- b. Infested or infected with any animal or organism which in the area of destination is a) of common

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occurrence, and b) not being subjected to eradication or intensive control.

**"Reasonable cause to believe" is not applicable to weeds or weed seeds.*

California Department of Food Agriculture

Date

CA Agricultural Commissioners Association

Date

2.2.7 SOME GENERAL PROVISIONS OF THE FOOD AND AGRICULTURAL CODE

The purpose of California's Food and Agricultural Code (FAC) are:

- o To promote and protect the state's agricultural industry
- o Protect public health, safety, and welfare.

In all civil actions, the provisions of FAC shall be liberally construed for the accomplishment of these purposes and several divisions of the code. Some general provisions of the FAC are highlighted below:

- o Any person in whom the enforcement of any provision of the FAC is vested may serve all processes and notices
- o The district attorney of any county in which a violation of any provision of the FAC occurs shall, upon request of any enforcing officer or other interested person, prosecute such violation. Unless a different penalty is expressly provided, a violation of any provision of this code is a misdemeanor.
- o It is unlawful for any person to alter any record or document, in the office of a commissioner, that is required to be filed pursuant to any provision of the FAC or pursuant to rules and regulations authorized by the code, without the approval of the commissioner or an authorized deputy.
- o Whenever any notice, report, statement, or record is required by this code to be kept or made in writing, it shall be in the English language.

Any document that is required or permitted by the FAC to be recorded shall be recorded in the office of the county recorder of the county in which the property or product is situated.

- o Proof of possession by any person engaged in the sale of a commodity establishes a presumption that the commodity is for sale.
- o Unless otherwise stated, the masculine gender includes the feminine and neuter; and the singular number includes the plural, and the plural the singular.
- o Plants growing in native stands or planted for ornamental purposes are considered as part of the agricultural industry; and must be protected from pests and diseases.

2.3. CALIFORNIA CODE OF REGULATIONS

The California Code of Regulations (CCR) contains rules and regulations, which have been promulgated by individual state departments according to authority granted to them by the legislature. The departments follow procedures set forth in the [Administrative Procedures Act](#) of the Government Code and the regulations of the [Office of Administrative Law](#) (OAL).

These "administrative rules and regulations" do not have to be passed by the legislature or signed by the governor. An exception to this rule is the state exterior quarantines, which must be signed by and proclaimed by the governor. Administrative rules and regulations are therefore much easier and faster to enact, modify or repeal as conditions change (see Section 2-6). The rules and regulations are more specific than the Food and Agricultural Code statutes and can be regarded as the working manual for enforcing the Food and Agricultural Code. Most of the rules and regulations in the CCR pertaining to agriculture are included in [Title 3, Chapter 4](#). This title deals with plant health. Chapter 4, subchapter 3 focus on entomology and plant quarantines. Regulations related to plant quarantines are assembled together to form the [Plant Quarantine Manual](#).

2.3.1 FREQUENTLY ASKED QUESTIONS

What is a regulation?

A regulation is a rule adopted by a state regulatory agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

Do regulations have the same effect as laws?

Yes. Legally adopted regulations filed with the Secretary of State have the force of law.

What is the difference between a regulation and a statute?

A regulation is adopted by a state regulatory agency,

approved by the OAL, filed with the Secretary of State and signed by the Governor. A statute, law or rule is passed by the legislature and signed by the governor.

By what authority can an agency adopt regulations?

A regulatory agency receives its power to adopt laws from statutes. This authority is cited at the end of each regulation. Certified copies of regulations are available at the State Archives in the Office of the Secretary of State (916-653-7715).

Do agencies have to adhere to guidelines when adopting regulations?

Yes, agencies are to follow the procedures set forth in the [Administrative Procedure Act](#).

What is the Administrative Procedure Act (APA)?

The APA sets forth the procedures that state agencies must follow when adopting regulations. Among other requirements, it requires state agencies to:

- o Give public notice
- o Receive and consider public comments
- o Submit regulations and rulemaking files to the Office of Administrative Law for review. The review is to
 - o Ensure compliance with APA requirements
 - o Have the regulations published in the CCR's.

Must all agencies comply with the APA requirements?

The majority of agencies must comply with APA requirements. However, an agency may be exempt by statute from complying with the procedures in APA.

If an agency is to comply with the APA but does not, what is the status of those regulations?

Such regulations are invalid. They are commonly referred to as "underground regulations."

2.4. PLANT QUARANTINE MANUAL

The [Plant Quarantine Manual](#) (PQM) contains [CCRs](#), policies and guidelines that are in effect and used in day-to-day state and county pest exclusion activities. Updates and revisions to the PQM are distributed by email and/or as printed copies. At the PQM website, the manual is available in both hypertext markup language (HTML) and Portable Document Format (PDF) formats.

Each inspector should read, understand, and file changes properly in his/her personal print copy of the PQM. It is important that inspectors update their PQM regularly to ensure proper decision-making in the field. An out-of-date manual section could lead to enforcement errors with expensive consequences in terms of accidental pest

introductions or mistaken commodity rejections or destructions. The PQM is organized into distinct sections, separated by colored tabs for ease of reference.

The first section is "Federal Foreign Quarantines." These quarantines are directed against pests that occur in locations outside U.S. political boundaries. An example is CFR 319.19 (Citrus Nursery Stock), which is intended to prevent the introduction into the U.S. of serious citrus diseases, such as citrus canker, that occur in other countries.

The next section is "Federal Hawaiian and Territorial Quarantines." Federal territorial plant pest regulations, involve Hawaii due to its unique regulatory history, pest infestations, and geographic location. For example, CFR 318.13 addresses Hawaiian fruits, herbs and vegetables, while CFR 318.58 summarizes enterable fruits and vegetables from Puerto Rico and the Virgin Islands.

The third section is "The Federal Domestic Quarantines". This section discusses regulations for plant pests such as Asian long horned beetle, citrus canker, gypsy moth, and red imported fire ants. The federal government through USDA has jurisdiction over interstate movement of regulated commodities that could harbor pests of "limited distribution," which are subject to intensive or extensive eradication or suppression programs in the states where they occur. Title 7, Chapter 3, Part 301 of the CFR contains the full text of these quarantine notices that is summarized in the PQM.

The California Department of Agriculture CDFA can act on behalf of federal authorities when pursuing violations of federal quarantine regulations in California, as if such violations were to CDFA provisions (California Food and Agricultural Code, Section 6301 and 6301.1, PQM page 109.1).

The full texts of California State exterior and interior quarantines are presented in the PQM. Each section is organized by title, pest species, area under quarantine, and articles/commodities regulated. They list all restrictions that must be met to allow shipments of regulated articles into or within the state. One or more appendices may follow these subparts, and expand or define particular provisions of the regulations. It could signify to the inspector, the need for heightened inspection vigilance in areas infested by a particular pest(s)/disease(s) mentioned under authority of FAC Section 6461.5. These appendices are not part of the actual regulations, but in the future may be proposed and incorporated into the quarantine text as amendments.

In the next part of the PQM, "California State Exterior Quarantines" are outlined. These quarantines are designed to exclude agricultural pests and/or diseases that are known to occur in other states or territories from entering the State. Its

purpose is to prevent the artificial introduction and distribution of known, suspect or potential agricultural pests into the state. Examples of State Exterior quarantines include citrus pests, cotton pests, European corn borer, burrowing and reniform nematodes, Japanese beetles.

“California State Interior Quarantines” are presented in the next part of the PQM. State interior quarantines are proposed and officially adopted as necessary to prevent or slow the spread of serious plant pests known to occur in the State and against which active eradication efforts may be underway. Many federal quarantines against exotic fruit flies like Mediterranean fruit fly, Oriental fruit fly, Mexican fruit fly, etc mirror quarantine regulations enacted by the State to address pest outbreaks. If no quarantine actions were to be taken by CDFA against such pest(s) when found in California, the federal government through USDA could impose quarantine on the entire State. This would seriously disrupt agricultural trade and commerce.

The final component of the PQM lists “County Restrictions.” Some of the restrictions may be ordinances against various agricultural pests. County restrictions have the intent to prevent the introduction into a particular county of those pests known to occur in other counties. In addition, these restrictions would apply to regulated commodities entering the county from out of state as well.

2.5 OFFICE OF ADMINISTRATIVE LAW

The [Office of Administrative Law](#) is responsible for reviewing administrative regulations proposed by state agencies for compliance with standards set forth in California's Administrative Procedure Act (APA). State agencies must consider suggestions and objections from the public before it adopts or changes any regulation not exempted from the Administrative Procedure Act.

After adoption, regulations may affect economic activities in many segments of the California public. The OAL reviews each proposed regulation and approves a regulation only when the rulemaking agency has adequately considered public comments. Such regulation must be easily understood, necessary, authorized, and consistent with law. When approved and filed with the Secretary of State, a regulation has the force of law. Regulations are printed in the [California Code of Regulations](#). In addition to its regulatory review program, OAL responds to requests for determinations regarding whether a state agency rule meets the statutory definition of a “regulation,” and if so, whether the rule should have been, but was not, adopted pursuant to the requirements of the Administrative Procedure Act.

State agencies like CDFA may adopt an [Emergency](#)

[Regulation](#) anytime it can demonstrate an immediate need for a regulation to protect the public or if a statute deems the regulation to be an emergency for purposes of the APA. The public may comment directly to OAL on emergency regulations within five days after the regulation is submitted to OAL for review. The OAL has up to 10 calendar days to review an emergency regulation. The OAL reviews emergency regulations to determine if an emergency has been demonstrated, or deemed by statute and whether the regulation satisfies the authority, reference, consistency, clarity, non-duplication, and necessity standards.

2.6 COMPLIANCE AGREEMENTS

Compliance Agreements are tools used by CDFA and/or cooperating Pest Exclusion Programs to ensure that regulated/quarantined businesses or individuals comply with regulatory restrictions during their conduct of business without the risk of further spreading the regulated pests or diseases. The agreement reduces regulatory workloads and helps to facilitate movement and orderly marketing of regulated commodities. Nurseries that signed a compliance agreements need not wait for a regulatory inspector to be present to certify each shipment of nursery stock that leaves its facility. These establishments can “self-certify”, load, and ship the qualifying nursery stock at any time.

It is important to carefully complete and review a compliance agreement prior to signing it. The business owner, manager or designated employee can sign on behalf of the establishment whereas a CDFA, USDA, or County Inspector will sign for Interior Pest Exclusion. A unique set of compliance agreement numbers is assigned to each business that is signed into compliance. The agreement is accompanied by exhibits that stipulate responsibilities, obligations, procedures, record keeping, time covered, verification audits, certifications and any other specific rules and regulations that must be abided for the agreement to be valid. Businesses/establishments that signed a compliance agreement generally agree to:

- o Handle, process, and/or move all regulated articles in accordance with specified quarantine requirements.
- o Follow CDFA, USDA and/or County Agricultural Commissioner’s personnel instructions for the use of any and all permits and certificates issued in the compliance agreement.
- o Reproduce a federal, state or county quarantine shield/certificate having exact languages of the quarantine and compliance agreement number, in specific format(s).
- o Use quarantine certificates only for shipments of regulated articles that have been inspected and found free of the pest/disease.
- o Maintain and make such records as above accessible for

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- inspection upon reasonable notice by the CDFA, USDA and/ county staff.
 - o Coordinate pest/disease treatments and surveys with Exclusion personnel.
 - o Regulatory personnel may supervise all treatments.
 - o Pest Exclusion staff may survey the establishment for the pests/diseases at any time. Survey may include testing for residues of treatment pesticides in soil or commodities.

Two photocopies of the compliance agreement are made; one copy is kept in the program office as a working copy and the second copy given to the establishment for their records. Original copies of compliance agreements are generally maintained in a safe place at the program office or the issuing office for at least 3 years and thereafter stored/destroyed according to local recycling policies.

Below are some examples of compliance agreements.

- **Sudden Oak Death Compliance Agreements**
 - [For Nurseries in Non-infested Counties \(PDF\)](#)
 - [For Nurseries in Infested Counties \(PDF\)](#)
- **Red Imported Fire Ant Compliance Agreements**
 - [Production Nurseries \(PDF\)](#)
- **Fruit Flies Compliance Agreements**
 - [General Compliance Agreement \(PDF\)](#)

2.7 HOLD NOTICE

Recommendations for Hold Notice ([PDF](#), [MS WORD](#) versions) normally originate with CDFA or County Agricultural Commissioner's office staff. The purpose is to prevent the movement of possibly infested or infected articles until the pest status can be determined and the risk of spread eliminated. Hold Notice is needed during the time between the discovery of an infestation and the effective date of a new quarantine. Regulatory staff of most eradication projects routinely issues the notices.

The following are some instances where a hold notice may be needed:

- o Any property found infested with a serious plant pest not known to occur in California where immediate action cannot be taken to eradicate. Such an example is a potato field that is infected with powdery scab of potatoes.
- o Any high-risk location, such as an orchard, within five miles of a new exotic fruit fly infestation.
- o Any property where there is reasonable causes to presume an A-rated pest may exist, and regulated articles would otherwise be moved.
- o A feed grain mill containing grain contaminated

with noxious weed seed, with no apparent method of safe handling such material.

- o A nursery where adult Japanese beetles were found.
- o Fields of grain thought to be infested with an A-rated pest where there is a need to sample, test, treat, or process the resulting grain from such fields.

Food and Agricultural Code Section 5701 authorizes that a hold notice may be issued for any premise located within a five-mile radius of a pest find to prohibit movement of host material. Hold notices may initially be given verbally but this is not recommended and would make it almost impossible to take further legal action against violators. Section 5702 and 5704 of the Food and Ag code requires that all hold notice releases shall be in writing.

The written hold notice does not have to be on any special form. Some county agricultural commissioners have developed their own form for this purpose. A sample [Hold Notice](#) form is included below. This form may be placed on county letterhead.

The nursery program has a special hold notice form to fit its needs; "Notice to Hold Commodities on Premises", [Form 64-069](#). It is used on stock infested or infected with A, B, or Q - rated pests. They also use the hold notice authority given in section 5701 of the Food and Agricultural Code when issuing a "Report of Nursery Inspection/ Notice of Noncompliance", [Form 64-064](#).

USDA-APHIS-PPQ has an "Emergency Action Notification" PPQ Form 523 that is often used in addition to a CDFA hold notice when the pest is of federal significance.

Contact the local CDFA – Pest Exclusion office for advice on issuing hold notices.

LINK TO FORMS

- [Hold Notice \(PDF\)](#)
- [Hold Notice \(MS WORD\)](#)

2.8 PERMITS AND REGULATIONS

- I. State Permits.** This is generally used for intrastate movement of agricultural commodities. The CDFA's Special Permits Program has the authority to approve or deny applications.

A. Quarantine Commodity

(Requires PE [Form 66-045](#) - Application and Permit to Move and Use Plant Quarantine Commodities)

Master Permits are issued to origin state regulatory agencies for multiple shippers. Individual Permits are generally issued to private party or to origin state for one shipper.

Steps to obtaining Permits

1. Private individual makes an inquiry and it is determined the commodity does not meet a State quarantine requirement.
2. Master permit exists; refer to origin state regulatory official so they can determine if they qualify to participate.
3. No master permit exists, the individual lives within California and there appears to be a demonstrated need warranting the consideration of a permit (*commodity not available anywhere else; appears to be significant economic hardship; involves public entities or officials; etc.); refer to the Permits Program staff.
4. No master permit exists, the individual lives outside California and there appears to be a demonstrated need warranting the consideration of a permit; refer the individual to the proper origin state regulatory official. You should also inform the applicant that:
 - o All permit requests must first be supported by the origin state regulatory agency. It generally involves some work on their part.
 - o The origin state regulatory officials should believe they have a viable alternative to mitigate the pest risk covered by the State's quarantine(s)
 - o The official should contact the Permits Program staff.
 - o All requests for permits, including renewals, must be in writing and can be via an e-mail, fax, letter, etc.
5. The permit request comes directly from a regulatory official, direct to Permit Program staff.

*EXAMPLES

Good candidate: San Francisco Conservatory of Flowers wants to reopen after the earthquake with some mature specimen plants for the public to view. These mature specimen plants exist in Florida but cannot meet our quarantine requirements.

Not good: I live in Florida and I have a customer in San Diego and I want to ship him a 40-foot palm tree. Yeah, I

know they are available in California but they are too expensive and I can make an additional \$10,000 by shipping the Florida palm.

Good candidate: I work for the UC Riverside and there is a citrus variety that we can only find in Texas and would like to have as a source of germplasm for research purposes.

Not good: I live in Florida and planted a citrus from seed that I had for 10 years and would like to bring to California when I move there next month.

B. Live Plant Pests or Noxious Weeds

(Requires PE [Form 66-026](#) - Application and Permit to Move and Use Live Plant Pests or Insects or Noxious Weeds)

1. For *intrastate* movement or where the USDA does not require a permit for *interstate* movement.
2. Permittee must have CA address and have authority to represent business, etc. (not issued to university or college students).
3. State rated/noxious weed: Mature plants, seeds, or other parts capable of propagation are within the definition of a "noxious weed" under regulations pursuant to the Plant Protection Act (see PQM).
4. Plant pest: pathogens (bacteria, fungi, virus or nematodes) or insects (rarely animals).

Special note on insects:

- Section 3558 of the California Code of Regulations pertains to insects that may be imported or shipped within California without a permit. Insects exempted by this regulation or that have been previously approved for release as a biocontrol agent in California, do not need a permit. All other insects require a permit when intentionally moved. Spiders are not insects or considered a plant pest and no permit is required for them.
5. The insect or plant pest movement must be intentional and not incidental and from one property to at least another (e.g. A plant has a common virus and a light infestation of cotton aphid and the owner is moving the plant from one county to another because they are moving - no permit required. A researcher studying host, vector, and pathogen relationships is moving a plant that was intentionally infected with a common virus and has a light infestation of cotton aphid, the vector, from a greenhouse on campus to a research field plot - permit is required. A person intentionally cultures *Phytophthora infestans* from a plant on their property - no permit required; and wants to deliver the culture to a plant pathologist friend - permit required.

C. Approved Laboratories to Receive Quarantine Material

Facilities are inspected and put under a compliance

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agreement to receive quarantined commodities, generally for analytical processing.

D. Cotton

Primarily non-approved cotton varieties to be planted in the San Joaquin Valley Quality Cotton District

For additional information go to:

<http://www.cdfa.ca.gov/phpps/permitsandregs.htm>

II. Federal Permits (generally for interstate or international movement. CDFA recommends approval, approval with modifications or denial)

A. Live Plant Pests or Noxious Weeds (Requires PPQ Form 526 - Application and Permit to Move Live Plant Pests or Noxious Weeds)

1. For *interstate* movement into or from California or foreign movement into California.
2. Permittee must have authority to represent business, etc. (not issued to university or college students).
3. Mature plants, seeds or other parts capable of propagation are within the definition of a "noxious weed" under regulations pursuant to the Plant Protection Act.
4. Plant pest: pathogens (bacteria, fungi, virus or nematodes) or insects (rarely animals). The USDA does not maintain a list of organisms that are exempt. The permittee upon applying will be informed by the USDA if the organisms are allowed or prohibited due to pest status.

B. Soil Permits

(Requires PPQ Form 525A - Application for Permit to Receive Soil)

All soils imported from foreign countries, must be treated as a condition of entry. This also applies to some soil that is moved domestically.

C. Postentry Quarantine

(Requires PPQ Form 546 - Agreement for Postentry Quarantine/State Screening Notice)

This regulation involves the importation of specified restricted plant and plant material from international/foreign sources under a growing agreement.

D. Import Plants or Plant Products

(Requires PPQ Form 587 - Application for Permit to Import Plants or Plant Products)

This regulation involves the importation of unrestricted plants or plant material from foreign sources

E. Import Plant or Plant Products for Experimental

Purposes

(Requires PPQ Form 588 - Application for Permit to Import Plants or Plant Products for Experimental Purposes)

Importation of prohibited plants or plant material from foreign sources

For additional information concerning the above permits and to download the forms go to:

<http://www.cdfa.ca.gov/phpps/permitsandregs.htm>

or

<http://www.aphis.usda.gov/ppq/permits/>

F. Biotechnology- Plants, Plant parts, or Insects

The Department's authority for review is limited to compliance with quarantine regulations, use of challenge organisms that would require an additional permit (e.g. field inoculations to determine level of disease resistance) or that the genetic alteration will increase the potential for the plant becoming a weed. Unless questioning a specific document already issued, interested parties should be referred to the USDA's website.

The USDA's Biotechnology Regulatory Services (BRS) program regulates the field testing, movement, and importation of genetically engineered (GE) organisms that are known to be, or could become plant pests. BRS issues various types of permits for each of these activities. There is also a federal Compliance and Enforcement Program that inspects, audits, and oversees activities under the permit process. BRS also evaluates petitions for deregulation to ensure that products being considered for removal from regulation do not pose a threat to U.S. agricultural or environmental health. For additional information go to: <http://www.aphis.usda.gov/brs/index.html>

**2.9 GUIDELINES FOR COLLECTING
EVIDENCE AND NOTICING FOR
QUARANTINE VIOLATIONS**

The procedures outlined below should be used as guidelines, not strict requirements, and can be adjusted to suit the needs of each particular case, as the situation requires.

**STEP 1: A QUARANTINE VIOLATION IS
DETECTED**

There must be a quarantine violation before administrative proceedings can be initiated. The violation may be in relation to a fruit fly quarantine project: non-safeguarded host material in a market; selling fresh backyard host material; the release of

commercially grown host material prior to treatment/inspection and official release by an appropriate State, County, or Federal quarantine official. Examples of non project violations may include: moving and/or selling commodities placed on hold pending proof of ownership/origin verification; nursery stock placed off sale moved and/or sold; or companies under Compliance Agreement not holding incoming commodities for inspection and official release.

Example 1: Two hundred and ninety pounds of sugar apples (*Annona squamosa*), a quarantine item, were placed on hold at Los Angeles International Airport (LAX) due to lack of proper certification for the Caribbean Fruit Fly State Exterior Quarantine. Los Angeles County agricultural personnel placed quarantine hold tags on the container and air bill. An airline employee subsequently released the shipment to the receiver without the certification and without the knowledge of L.A. County officials. Releasing the commodity placed on hold was in direct violation of Food and Agricultural Code Section 6401.

Once the inspector identifies a quarantine violation, a Quarantine Violation Report must be completed and administrative procedures can begin.

STEP 2: GATHERING EVIDENCE

The process of gathering evidence can be done in several ways. It is crucial to gather evidence as soon as possible after the violation(s) occur. If possible, gather as much evidence before you leave the premises. The following list contains items, which constitute evidence. Inspectors are not limited to the listed items, but they provide a basis from which to begin:

- Thoroughly examine all Code sections upon which a quarantine violation is based to determine what elements must be proved to make the case
- Take photograph(s) of the commodity in violation
- Get the name, address, driver license number, birth date, phone number and title of the person(s) responsible at the time of violation (request his/her driver's license or ID card for this information)
- Interview the person responsible, or in charge at the time violation was detected
- Obtain invoices, bills of lading and any additional paperwork associated with the commodity in question
- Request originals, but if it is not possible, get a clear, legible photocopies of all associated paperwork

- Interview everyone involved with the violation: supervisor of the person(s) responsible for the violation, person who picked up the commodity, person who sent the commodity, etc.
- Keep one of the containers in which the commodity came, if more than one commodity is involved, then keep one of each container. Place your initials on the container and date of seizure for future identification
- Look at and keep some of the packing material in the containers, newspapers can possibly indicate where the item was originally packed
- If applicable, include copy of Pest and Damage Report
- If a copy machine is on the premises, make a clear, legible copy of the violator's driver's license
- Include in the violation package, the original or copies of the Quarantine Violation Report, Notice of Rejection and/or Notice of Violation, pictures, inspector/witness statements, and Compliance Agreement, if applicable
- Have each inspector involved write up their own account of the violation, including their name, title, date, time, persons who worked with them, name and address of establishment in violation, type of commodity involved, and person(s) responsible for the violation.

Inspectors must be sure to include all circumstances surrounding the violation. It is usually better to have too much information than not enough; do not include anything in your report you would not want the general public to see. Your report may be reachable either through a Public Records Act request or by subpoena. Once you have transferred your draft notes to a report, dispose of the draft to avoid the possibility of confusion and inconsistent statements.

The list of evidence gathering above will at first appear overwhelming. It will also take more time and effort to collect than inspectors are used to giving to quarantine violations. However, successful prosecution at the administrative or criminal level requires proper gathering of evidence. All the materials listed are not always necessary for administrative proceedings, but the more facts you are able to gather, the stronger your case.

Example 2: An airline employee released a container of Longans (*Dimocarpus longan*), which had been placed on hold at an airport by County agricultural officials (Non-commercial longans are a quarantine item under the Caribbean Fruit Fly Exterior Quarantine). A yellow quarantine tag had been attached to the air bill. The fruit was released on a duplicate air bill. Releasing the longans placed under hold was in violation of Food and Agricultural Code Sections 6401, 6461, and 6303.

Evidence included in the hearing package for this violation included:

- Paperwork from the first violation – Quarantine Violation reports, a letter from the county informing the airline of violations and requesting a meeting, and a response letter from the airline
- Initial Quarantine Violation for longans
- Notice of Rejection
- Second Quarantine Violation for releasing longans
- Photocopy of original airway bill
- Photocopy of duplicate airway bill with Quarantine Notice attached

The physical evidence gathered for the case should be kept in one location, preferably in a locked case or cabinet. The labeled evidence should not be mixed with evidence from other cases. A chain of custody* should be established for all physical evidence.

(*a **chain of custody** is a “roadmap” that shows how evidence was collected, analyzed and preserved in order to be presented as evidence in court.)

STEP 3: INTERVIEWING SUSPECTS

Each interview will be unique, however, the basic questions you ask will be the same from one interview to the next. It is best to approach the interviewee with a calm, relaxed, nonjudgmental attitude. You want to collect the facts in a clear and concise manner. If you approach the suspect/interviewee in a hostile and/or condescending manner, you will more than likely get the same attitude in return, as well as no answers to your questions. Remember that you are perceived as an authority figure, and the interviewee, possibly fearing for his/her job, may at the very least be intimidated by you. Respect earns respect and keeping this in mind during your interview will make it much more successful.

The basic questions you need to ask are: who, what, when, where, why and how? Ask your questions in an open-ended way, not so a simple “yes” or “no” answer is all that is required from the respondent.

1. WHO

- 1.1. Who purchased the commodity?
- 1.2. Who committed the violation?
- 1.3. Who was responsible at the time of the violation?
- 1.4. Who signed for the commodity?
- 1.5. Who picked up the commodity?
- 1.6. Who shipped the commodity?

2. WHAT

- 2.1. What commodity was involved (common and scientific name)?
- 2.2. What was the commodity purchase price?
- 2.3. What happened (series of events from beginning to end)?
- 2.4. What is the origin of the commodity?
- 2.5. What is the usual procedure for handling the commodity?
- 2.6. What safeguards are in place to prevent improper release?

3. WHEN

- 3.1. When did the commodity arrive on the premises?
- 3.2. When did the violation occur?
- 3.3. When was the violation discovered?
- 3.4. When did the suspect realize the violation had occurred?

4. WHERE

- 4.1. Where did the commodity come from?
- 4.2. Where was the commodity secured?
- 4.3. Where did the commodity go when released?
- 4.4. Where was the commodity discovered?
- 4.5. Where was the commodity destined?
- 4.6. Where did the violation occur?

5. WHY

- 5.1. Why the commodity was purchased?
- 5.2. Why did the violation occur?
- 5.3. Why wasn't the commodity released?
- 5.4. Why wasn't the proper paperwork with the commodity?
- 5.5. Why would a commodity be released when placed on hold?

6. HOW

- 6.1. How long has the interviewee worked at his/her position?
- 6.2. How long has the commodity been on premises?
- 6.3. How do you know if the commodity can be released or not?
- 6.4. How does an employee know if a commodity needs to be held for inspection?

Some people are not going to talk with you; there isn't anything you can do about it. You should not use the threat of legal action against a person to convince them to talk with you. Most people will ask what is going to happen to them as a result of the violation. You should explain that the decision does not rest with you but with your superiors. Let them know they will hear from the county or appropriate agency in a letter with

instructions regarding the violation(s).

Complete an investigative report, filling in as much information as possible. This report gives you many of the questions you need answered.

STEP 4: ADMINISTRATIVE HEARING PAPERWORK

Each county should check with its legal counsel/advocate for the proper and legal way in which to deal with quarantine violators. The following descriptions have been adapted from a from materials of the Los Angeles County Agricultural Commissioner Office memorandum entitled “General Plan for Levying Civil Penalties on Quarantine Violators.”

A county administrative hearing is not as formal as a civil or criminal hearing, but the process should be treated with the same respect. The advocate, witnesses for the county, and everyone intending to represent the county should be on time. Tardiness is unprofessional, and a tardy key witness could unnecessarily cause a delay or cancellation of the proceedings. If your witness wears a uniform on duty, s/he should wear a clean, well-kept uniform to the hearing. Non-uniformed personnel should also look professional. Worn tennis shoes, worn or ripped jeans, t-shirts, etc., are not professional attire. Instruct witnesses to speak clearly and loudly enough for everyone in the room to hear. The violator will be given the opportunity to question county witnesses. The violator should be treated with the same respect and courtesy as the county advocate. Keep in mind the violator is there to protect his/her business and/or self interests; s/he may be hostile. Witnesses should remain calm and in control under questioning.

Once a quarantine violation has been detected and sufficient evidence has been gathered, both a “Notice of Proposed Action, Grounds Therefore, and Opportunity to be Heard” and “Order and Stipulation” forms should be completed and sent by certified mail to the violator. Make sure to keep the return receipt and make copies of the letters, the certified mail certificate and envelope before mailing, and place them in the case file. The violator has twenty (20) days in which to respond by returning the “Order and Stipulation” form. Return of the “Order and Stipulation” form leads to one of three routes of action:

Route 1:

The violator returns the “Order and Stipulation” with payment of the designated fine. The violator agrees to pay the fine and does not contest the violation. Once the fine is paid the case should be considered resolved. There will be no appeal to the Secretary because the violator waived his/her appeal rights by signing the “Order and Stipulation” form.

Route 2:

The violator returns the “Order and Stipulation” and requests a hearing. If the violator requests a hearing, the county sets up a hearing date and sends a “Notice of Hearing” to the violator. The “Notice of Hearing” provides the violator with a date, time, and place of hearing, as well as some instructions as to how the hearing will be conducted. The violator has the right to review the evidence against him/her prior to the hearing at the office of the County Agricultural Commissioner. At the hearing the violator has the right to again review the evidence against him/her and to present evidence on his/her behalf. Follow the hearing procedure listed in [CDFA, Interior Pest Exclusion Citation Manual](#).

Once the hearing is concluded, the hearing officer will have one to three weeks to make a decision. A “Notice of Decision, Order, and Right to Appeal Following the Commissioner’s Hearing,” is sent to the violator. The violator has ten (10) days from the receipt of the decision to file an appeal with the Secretary of Food and Agriculture (based on the date of receipt taken from the returned certified mail certificate).

- If the violator does not choose to appeal the decision, it will become effective twenty (20) days after the date of the decision notice, in which case the violator must follow the order of the judge.
- If the violator chooses to appeal the decision, s/he must file a written appeal with the Secretary of Food and Agriculture in Sacramento within ten (10) days of receipt of the Decision Notice. These instructions are printed on page 2 of the Decision Notice. A State Appeal Director is appointed by the Secretary to review the hearing materials, and the arguments provided by the violator. The State Appeals Director receives a copy of the case filed against the violator, copy of all evidence presented at the hearing, and a copy of the tape made of the hearing. This material is reviewed and the State Appeal Director has forty-five (45) days to make his/her decision. S/he can make one of three decisions:

Sustain: agree with the Hearing Officer’s original decision,
Modify: make changes in the original decision, such as reduce the amount of the fine, or

Reverse: disagree with the original decision and overturn the decision.

The county is notified of the State Appeals Director’s decision and receives a copy of the decision. The appellant (= violator) also receives a copy of the decision. If the appellant still does not agree with the findings, s/he can then file an additional appeal with the county judicial system.

Route 3:

The violator requests a hearing, but s/he, or an authorized representative, fails to appear. In this case, the judge submits a written decision within ten (10) days of the hearing date levying the original fine.

If the fine is not paid, the commissioner has several options to obtain payment, including the "Demand for Payment Letter." If the county's business division cannot collect the fine due, county collections will take over to collect the funds owed. County collections will usually pursue fines equal to or greater than \$100.00; they will also keep half of the money collected.

It is important that on the day or week before the hearing, you do the following; call your witnesses to remind them of the upcoming hearing; make sure your exhibits have been copied; know where your physical evidence is located; know the questions you intend to ask; and prepare your closing statement.

STEP 4: ORGANIZING FOR THE HEARING

- i. Once the violation occurs, the file should be opened for the case. Use the method, which works best for you, such as, identifying the file by violator name, corporate name, etc. Place all paperwork that pertains to the case in the same file; this should prevent loss of documentation. As an extra precaution you may want to establish a second working file. The working file may be taken from the premises, while the original must remain safely in the office.
- ii. The physical evidence gathered for the case should be kept in one location, preferably in a locked case or cabinet. The labeled evidence should not be mixed with evidence from other cases. The evidence should have the person's initials and date on it and you should know who collected the evidence.
- iii. Outline the sections of the Food and Agricultural Code violated. Review Division 4 of the Code, as there may be more violations than the initial section quoted.
- iv. Complete a list of the witnesses necessary to testify at the hearing, giving their name, address and phone number.
- v. For example: In the airline case listed under Step 2, Inspector X, Inspector Y and Deputy Agricultural Commissioner Z are listed as witnesses for the county. Mr. A., Service Manager, and Ms. B., Service Representative, are listed as witnesses for the airline. Inspector X wrote the violations, which began the

administrative hearing process. Inspector Y and Deputy Agricultural Commissioner Z were present at the airline's first administrative hearing for similar violations in 20xx. Y and Z would testify to the airline's violation history, and the steps the airline agreed to in order to prevent future violations. Mr. A and Ms. B were the persons responsible at the time the longans were released without permission.

- vi. Make a list of the questions you want to ask the witnesses. Know the answers to the questions you are going to ask. Prepare the inspectors and county witnesses for the hearing. Go over with them the questions you intend to ask. You do not have to rehearse the answers, but knowing the questions before the actual hearing will make them more at ease during the hearing. Do not tell the witness(es) what to say. You want them to tell the truth, as they know it.
- vii. Decide what materials you will use as exhibits. Exhibits are the pieces of evidence you will offer to prove your case (e.g. Notice of Violation, airway bills, compliance agreements, photographs, containers, etc.) The exhibits will be submitted to the administrative law judge for the record and a copy will be given to the violator. Make copies for all parties involved: one copy for the court, one copy for yourself, and one copy for each violator.
- viii. Closing: The county advocate should be prepared to sum up the case. The summation highlights the important facts in the case. It also provides the advocate with the opportunity to suggest the penalty, and future procedures for the violator to follow in order that the violation does not happen again.

For example: In the case described under Step 2, the airline was sent a letter in which the county fined the corporation \$500.00 for the violation. At the hearing, the advocate suggested the \$500.00 fine stand, and in addition suggested the airline modify its policy for the release of agricultural commodities.

2.10 MEMORANDUM OF UNDERSTANDING - CITATIONS AND PLANT QUARANTINE POLICIES

PARTIES

California Department of Food and Agriculture and the California Agricultural Commissioners and Sealers Association

ADMINISTRATIVE LEVY OF CIVIL PENALTIES

Pursuant to Division 4 of [the Food and Agricultural Code](#), it is unlawful for any person to refuse to comply with any quarantine regulation established to carry out the provisions of the Code. In addition to any other applicable penalties, any person who violates any requirement of Division 4 of the Code, or any regulation adopted pursuant to the Division, may be prosecuted civilly in any appropriate court in California. In lieu of civil action, the Secretary or the County Agricultural Commissioner may levy a civil penalty not to exceed \$2,500 for each violation.

The mutual objective of CDFA and the [California Agricultural Commissioners and Sealers Association](#) is the uniform, fair and equitable enforcement of all laws for which each agency is responsible. The memorandum of understanding serves as a policy and set of guidelines for the administrative levy of civil penalties in this area.

The following guidelines categorize, by severity, violations of California Food and Agricultural Code. They are provided to promote uniformity in the assessment of penalties for quarantine and other violations. They do not preempt the need for state officials or individual counties to analyze quarantine violations on an individual basis and to levy appropriate civil penalties.

AUTHORITY

A summary of applicable authority for the administration of civil penalties can be found in the Food and Agricultural Code. For purposes of enforcement in all civil actions, the provisions of the Code shall be liberally interpreted (Food and Agricultural Code, Section 3). The due process provisions of Section 5311 must be followed.

Division 4. Authority exists under Section 5311 to levy a civil penalty up to \$2,500 for any violation of any requirement of this division except as provided in Part 1, Chapter 8, Article 5, commencing with Section 5781, relating to host-free periods and districts. Those sections, which

specifically provide for civil penalties are:

- A. Section 5028 – Maximum civil liability of \$25,000 for causing an infestation.
- B. Section 5311 – In lieu of civil action, civil penalties, not exceeding \$2,500, may be levied for each violation of a regulation of this division.
- C. Section 5341.5 – Maximum civil liability of \$1,000 for failure to obtain a required certificate of inspection.

VIOLATION CATEGORIES

The degree of “seriousness” of any offense shall be determined based on the degree of actual or potential damage, which occurred, or could have occurred, as a consequence of the violation.

Violations may be determined to be minor, moderate, or serious. This MOU defines each of these categories and gives examples for each. However, the final decision on the severity of any violation must be made on a case-by-case basis.

- A. Minor Violations – Violations which are primarily procedural and result in no or minimal adverse impact on the environment, agriculture or enforcement. The appropriate penalty range is \$50 to \$750.

Examples of minor violations include: first time violations of a procedural nature from someone with little or no experience with quarantines, or violations of public nuisance standards.

- B. Moderate Violations – Violations, which are repeated minor violations, or those which cause significant damage, undermine enforcement, or pose a reasonable possibility of harming the agricultural industry or the environment. The appropriate penalty range is \$750 to \$1,500.

Examples of moderate violations include: repeat minor violations or first time violations, which might have an impact on the agricultural industry or the environment.

- | | |
|-------------------|---|
| Section 5307 | Public servant’s failure to report |
| Section 6304-6305 | prohibits the importation of exotic animal without permit |
| Section 6925 | Nursery stock movement |
| Section 7207 | Noxious weed violations |
| Section 7501 | Unlawful seed dissemination |

- C. Serious Violations – Violations, which are repeated moderate violations, those, which preclude or significantly interfere with enforcement, or those which cause major harm to the agricultural industry or the environment. The appropriate penalty range is \$1,500 to \$2,500. However, there may be cases where

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criminal and/or civil prosecution may be more appropriate. The decision as to how to proceed should be made jointly by the Secretary and the Commissioner.

Examples of serious violations include: repeated moderate violations, unauthorized certificate use, failure to hold for inspection, and deliberate circumvention of quarantine laws. These might include violations of the following sections of FAC:

Section 5208	Certificate violations
Section 5306	Refusal to comply with quarantine regulations
Section 5344-6	Failure to stop and declare commodities at a border station
Section 5349	Deliberately bypassing a border station
Section 5402	Public nuisance violations
Section 5553	Abandonment of a public nuisance
Section 5704-5	Movement under hold, compliance agreement violations
Section 5803	Nursery stock propagation violation
Section 5826	Nursery stock certificate misuse
Section 6048	Hydrilla violations
Section 6303-5	Quarantine shipment violations
Section 6321	Fruit fly host importation prohibition
Section 6401	Interstate shipment quarantine violations
Section 6721	Nursery stock license requirement
Section 6921-3	General nursery stock requirements
Section 6926-7	Nursery stock manifest requirements
Section 6970	Yielding of nursery stock permit
Section 7206-7	Harboring of noxious weeds
Section 7501	Pest seed dissemination
Section 7534	Seed certificate misuse

Link to [CDFA, Interior Pest Exclusion Citation Manual](#).

2.11 CALIFORNIA APPROVAL FOR RELEASE OF INTRASTATE SHIPMENTS

The California Department of Food and Agriculture is establishing a program to expedite the release of certain types of agricultural products being shipped within California. This program is not to be used for interstate shipments. The program is designed to alleviate problems involving subsequent multiple inspections, due to repacking and re-labeling, after the initial destination quarantine clearance inspections have been conducted.

A shipper, under a compliance agreement, will be authorized by the local Agricultural Commissioner's Office to use a stamp or pre-printed sticker with an assigned identification

number, which will be placed on the outside of each package indicating that it does not need to be held for additional inspections.

A copy of each signed compliance agreement is to be sent to Sacramento Pest Exclusion headquarters where it will be included in a master list.

COMPLIANCE AGREEMENT

The following letter format is suggested to outline the requirements for stamp usage:

COUNTY LETTERHEAD

Date

Addressee

To Whom It May Concern:

Attached is your compliance agreement and authorization to reproduce in facsimile form the "California Approval for Release of Intrastate Shipments" stamp. This stamp is to accompany all intrastate shipments of eligible commodities as specified on your Compliance Agreement or its attachment.

You may reproduce a facsimile copy of the attached stamp on invoices, postal meter devices and shipping labels. This reproduction is subject to my approval. The stamp must be reproduced in essentially the same format as indicated on the attached authorization and must be legible and conspicuous.

The Compliance Agreement outlines your responsibilities in order to comply with our quarantine requirements. Violation of the Compliance Agreement can result in suspension or revocation of your authorization.

If you have questions, please let us know. My staff will be glad to discuss requirements with you and review the manner in which you plan to reproduce the certificate.

Sincerely,

AGRICULTURAL COMMISSIONER

COMPLIANCE AGREEMENT

4. The "California Approval For Release Of
5. Intrastate Shipments" stamp authorized by the
Agricultural Commissioner should be on each

This agreement shall remain in force until revoked by either the California Department of Food and Agriculture or the County Agricultural Commissioner. Revisions may be made upon agreement of both signatories as necessary to include, delete, or modify requirements.

14. County _____ 15. Date _____

COUNTY LETTERHEAD

CALIFORNIA APPROVAL FOR RELEASE OF INTRASTATE SHIPMENTS STAMP

1. Company name 2. Shipping Address
and mailing address

This authorization is granted to use the "California Approval For Release Of Intrastate Shipments" stamp in accordance with provisions of the attached Compliance Agreement. Use is limited to those eligible commodities specified and is subject to suspension or revocation for failure to follow the terms of the Agreement. The Agreement shall remain in force until revoked by either the California Department of Agriculture or the Agricultural Commissioner and so long as the ownership and management of the firm remains unchanged.

This form may be reproduced as a stamp or a preprinted sticker on each package in the following format to accompany intrastate shipments of the specified commodities. The certificate number should be the county number followed by the accession number.

Signed _____
Agricultural Commissioner's Signature

Effective Date _____

<p style="text-align: center;">CALIFORNIA</p> <p style="text-align: center;">APPROVAL FOR RELEASE OF INTRASTATE SHIPMENTS</p> <p>NO.: _____</p> <p>This shipment has passed quarantine inspection upon entry into California or at the shipping origin within California and meets all California quarantine requirements.</p> <p style="text-align: center;">THIS SHIPMENT NEED NOT BE HELD FOR INSPECTION IN CALIFORNIA</p> <p>Issued by: _____ and California Department of Food and Agriculture 1220 N Street, Sacramento, CA 95814</p>
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LINKS TO LETTERS/COMPLIANCE AGREEMENT

Stamp usage letter ([PDF](#) or [MS WORD](#))

Compliance Agreement ([PDF](#) or [MS WORD](#))

Shipment stamp letter ([PDF](#) or [MS WORD](#))